

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

RAY VELASCO

Registered Nurse License No. 526168
Public Health Nurse Certificate No. 61724
Nurse Practitioner Certificate No. 13526
Nurse Practitioner Furnishing Certificate No. 13526

Respondent.

Case No. 2007-167

OAH No. L2007010629

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Registered Nursing as its Decision in the above-entitled matter.

This Decision shall become effective on December 16, 2007.

IT IS SO ORDERED November 16, 2007.



President
Board of Registered Nursing
Department of Consumer Affairs
State of California

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In the Matter of the Accusation Against:

Case No. 2007-167

OAH No. L2007010629

RAY VELASCO, R.N.,

Respondent.

PROPOSED DECISION

Donald P. Cole, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on August 20, 2007, in San Diego, California.

G. Michael German, Deputy Attorney General, represented complainant Ruth Ann Terry, M.P.H, R.N., Executive Officer, Board of Registered Nursing, Department of Consumer Affairs, State of California (complainant or Board).

Robert W. Stewart, Attorney at Law, represented respondent Ray Velasco, who was present throughout the hearing.

The matter was submitted on August 20, 2007.

FACTUAL FINDINGS

Jurisdictional Matters

1. On September 5, 1996, the Board of Registered Nursing issued to respondent License number 535192. Respondent's license will expire on January 31, 2008, unless it is renewed.

On January 31, 2000, the Board issued to respondent Public Health Nurse Certificate number 61724. On July 23, 2002, the Board issued to respondent Nurse Practitioner Certificate number 13526. On February 27, 2003, the Board issued to respondent Nurse Practitioner Furnishing Certificate number 13526. These certificates will expire on January 31, 2008, unless they are renewed.

2. On December 18, 2006, the accusation was signed by complainant. On January 3, 2007, the accusation and other required jurisdictional documents were served on respondent by certified mail. On January 8, 2007, respondent signed and thereafter transmitted to complainant a notice of defense. On January 26, 2007, complainant served on respondent a notice of hearing. On May 18, 2007, complainant served on respondent a first amended notice of hearing.

3. On August 20, 2007, the record was opened and jurisdictional documents were received. Sworn testimony was given, documentary evidence was introduced, and closing argument was presented. The matter was submitted on August 20, 2007.

The Criminal Conviction

4. On April 15, 2005, respondent pled guilty and was convicted of one count of violating Penal Code section 415, disturbing the peace, a misdemeanor. Respondent was placed on three years informal probation. The terms of respondent's probation included 45 days in custody (to be served on consecutive weekends), payment of \$555 in fines and fees, and completion of a 52-week domestic violence program and anger management counseling.

5. The conviction arose out of a domestic violence incident that occurred on April 30, 2004 at about 11:45 p.m.

According to the police report of the incident,¹ respondent's girlfriend RC told the police that she and respondent had just returned to her apartment after dining out. They got into an argument about finances. Respondent became upset and "grabbed [RC] by both of her arms, slapped her three times in the face with an open right hand and then used the back of his hand to hit her once more in her face." RC told respondent to leave, and respondent then apologized and went to get some ice to put on RC's eye. RC again told respondent to leave, stating that she wished to go to the emergency room. Respondent told her "she would be all right and he would take care of her. RC felt [respondent] would not leave, so she did not ask him again." Respondent stayed the night and left the following morning.

The respondent officers observed that the area around RC's left eye was "swollen and black and blue." The officers also observed "a small bruise to the right side of [RC's] chin and small bruises to her upper right arm/bicep area."

About two weeks later, the investigating officer attempted to phone RC, and respondent answered the phone. Respondent told the officer that he had been trying to contact and speak to him "to clear up what had happened." Respondent told the officer that he and RC had gotten into an argument about finances after dining out. Respondent told RC that he was going to "take his stuff and leave" her apartment. Respondent began to unplug the cords to the cable TV box, when RC "became upset at [respondent] and threw her cellular phone at him, and then the cellular phone charger. [RC] attacked [respondent],

¹ All matters stated in this Factual Finding are based on the police report, which was received in evidence at the hearing. No peace officer testified at the hearing.

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hitting him several times with open hands on his head. [Respondent] slapped [RC] once in the face to stop her from hitting him. [Respondent] said he did not mean to slap [RC] as hard as he did, but he wanted her to stop hitting him. [RC] began hitting him again, so [respondent] grabbed both of [RC's] arms to stop her. [Respondent] said this is why [RC] had bruises on her arms." RC told respondent she wanted to go to the hospital, but respondent "told her she was ok and he would take care of her." Respondent stayed overnight and left the next morning.

Respondent added that this was an isolated incident, that he and RC were now "fine," and that RC had written a letter to respondent's attorney, stating that she did not wish to press charges.

6. Respondent testified that he and RC had been together about four years when the incident occurred. Their relationship continued for about a year after the incident. RC then had to leave for Texas for family-related reasons. Respondent testified that he has had no other "incidents" with RC or with any other women.

Respondent testified that the incident occurred after he and RC had returned to RC's apartment after dining at an Outback steakhouse. They started to argue about financial matters (e.g., whose funds would pay for the dinner they had just had), and RC became upset and told respondent, "Our relationship is over." Respondent said, "Okay," and started to disconnect the cable television box, which respondent had been paying for. RC became angry and threw a cell phone and telephone charger at respondent—respondent had also been paying for the cell phone. Both the phone and the charger hit respondent. RC then approached respondent and started to hit him. When she wouldn't stop, and in an effort to get her off of him, he slapped her on the face twice, first with his open (palm side of his) hand and then with the back of his hand "on the way back." He then grabbed her on the right shoulder and pushed her away. RC then stopped hitting respondent.

Respondent testified that he noticed swelling around RC's eye, which surprised him, since he did not think he had hit her that hard. He got some ice and put it on her face. Respondent testified that he did not recall RC asking to go to the emergency room.

Respondent testified that respondent had a disability at the time of the incident, i.e., anxiety and depression, for both of which she was on medication.

Respondent testified that RC did not wish or plan to report the incident to the police, but was pressured to do so by family members, one of whom also called respondent and told him, "We're going to ruin your life."

7. RC did not testify at the hearing.

Respondent's Background, Rehabilitation, and Present Circumstances

8. Respondent has completed all affirmative terms and otherwise complied with the conditions of his probation.

Respondent completed the domestic violence program in March 2006. Respondent's evaluation form reflects that respondent received the highest score ("almost always") in every area measured on the form, including "takes responsibility for his own behavior rather than denying minimizing or blaming," "appears motivated to improve himself/herself," "understands the dynamics of partner violence and abuse," and "appears to be using appropriate anger management skills and techniques (such as Time Out) in their life." Respondent's "estimated risk of recidivism" was the lowest possible number (one on a scale from one to ten). The facilitator also made the following comments about respondent:

"I am so impressed with this clients [sic] assimilation of what was presented in the course. He has been such a good role model for others in the group. His knowledge base regarding chemical dependency, medical terminology and inter personal relations is excellent. I am sure he will succeed in the future and his new marriage will bring him happiness. Excellent prognosis."

Probation was terminated on March 16, 2007. On April 6, 2007, respondent's conviction was set aside and the case dismissed pursuant to Penal Code section 1203.4.

9. In a letter dated March 13, 2005, RC wrote a letter on respondent's behalf.² RC spoke highly of respondent as an acute care nurse and as a single parent. She stated that the incident of April 2004 was "an isolated incident." She added that she "threw the cell phone at him and as he was disconnecting the cable box I continue hitting him. I was out of control and I became hysterical. . . . I believe [respondent] reacted out of fear of me and for me when he slapped me." RC explained that she only filed charges against respondent because "I was coerced by my family to file the report." She stated that "we love each other very much, I love him with all my heart. We have learned from our mistakes, improved our communication skills and we have put this incident behind."

10. Dr. Sami Nazzal, M.D., is a cardiologist, and owns and operates the Southland Cardiology Medical Group (Southland). Dr. Nazzal is board certified in Internal Medicine, Cardiovascular Diseases and Intrerventional Cardiology; he is also certified as having special competency in Cardiac Pacing and Electrophysiology. Dr. Nazzal received his M.D. degree, with Distinction, from the Faculté de Médecine de Lille, France in 1968. He had internships in Brussels, Belgium and in Youngstown, Ohio, where he also served his residency in internal medicine. He has had two fellowships in cardiology and served as an instructor and then assistant professor of medicine at Loma Linda University School of Medicine from 1977 to 1990. He is currently Chairman, Department of Medicine, at St. Bernardine Medical Center in San Bernardino. He has had numerous publications.³

² Based on the date of the letter, it is inferred that the letter was written in the context of respondent's then-pending criminal case.

³ Since Dr. Nazzal's testimony was not for the purpose of offering expert medical opinions, and since no expert medical opinions were offered to counter any opinions expressed by Dr. Nazzal, a full recitation of Dr. Nazzal's impressive credentials is unnecessary.

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Dr. Nazzal testified⁴ that he has known respondent since October 2004, when respondent joined Southland. Respondent practices as an acute nurse practitioner under Dr. Nazzal's direct supervision. Dr. Nazzal described respondent as "quite compassionate." Dr. Nazzal never observed respondent become angry with a patient. Instead, respondent is "very calm," is "very cool and collected," and "gets very good information." Dr. Nazzal trusts respondent's judgment.

In a February 26, 2007 letter to the Board, Dr. Nazzal wrote that:

"The nature of the specialty of Cardiology involves critical thinking and acute decision-making during emergent situations. I have known Mr. Velasco to meet the demands of this practice with the utmost professional demeanor. He is courteous, respectful, kind and tolerant, even in the most demanding situations. Staying calm and responding effectively are qualities he displays. He is a role model. His bedside manner and patient rapport are excellent. Patient safety has never been an issue and patient satisfaction is high. He is well liked and respected by the patients, the nursing staff and the referring physicians as well. Mr. Velasco exceeds the standards of care, and his conduct is beyond reproach."

In a second February 27, 2007 letter to the Board, Dr. Nazzal described in detail respondent's intimate involvement at Southland in the areas of patient assessment, diagnosis, planning, implementation, and evaluation. Dr. Nazzal wrote that respondent "has been, and is, an excellent nurse practitioner, and he performs all his duties very well with compassion, precision and care. He goes well above and beyond his duty to care for his patients and sees that their physical and emotional needs are fulfilled. He is always eager to learn, and is always respectful to patients, his peers, and physicians alike."

Dr. Nazzal signed both of his letters under penalty of perjury.

Dr. Nazzal testified that if respondent were placed on probation, this would impact his practice "very hard," i.e., Southland would probably lose some business.

11. Dr. L.D. Miller, Ph.D., is a licensed clinical psychologist, and is also a licensed marriage and family therapist. Dr. Miller is board certified by the American Board of Medical Psychotherapists and the American College of Forensic Examiners. Dr. Miller received his Ph.D. in 1981 from United States International University in San Diego. He has engaged in the private practice of clinical psychology since 1980, "[w]orking with children, adolescents and adults in individual, family and marital therapy specializing in medical and forensic psychology and psychdiagnostics."

Dr. Miller has conducted psychological testing throughout his career. He has been retained by the counties of Riverside and San Bernardino in connection with the criminal

⁴ This Factual Finding is based both on Dr. Nazzal's testimony and on two letters he wrote to the Board in February 2007.

justice system, and has also worked for private attorneys, in both civil and criminal cases. He has also worked with domestic violence and anger management issues in his private practice.

Dr. Miller testified⁵ that he saw and interviewed respondent on August 9, 2007 for an evaluation of his personality functioning to be submitted to the Board in the context of the present proceeding.

Respondent told Dr. Miller that he was born in Mexico, has been in the United States since 1980, and became a United States citizen in 2000. Respondent is married, but his wife remains in Mexico while respondent seeks to gain legal status for her so that she can immigrate to the United States.

Dr. Miller testified that he administered to respondent a Mental Status Examination. He also administered two questionnaires, the Minnesota Multiphasic Personality Inventory-2 (MMPI) and the Millon Clinical Multiaxial Inventory-III (MCMI). The MMPI is an objective test, designed to measure clinical data relating to an individual's psychopathology. The MCMI addresses not only psychopathology, but also personality traits, as well as severe clinical disorders.

According to Dr. Miller, "Analysis of [respondent's] response style on the[] two questionnaires reveal that he responded to the questions in a mildly defensive manner in that he tended to present himself in a socially favorable light. He tends to admit to few psychological problems or pressures and perceives himself as being very serene in his approach to life. This approach is also characteristic of individuals who are trying to maintain the appearance of adequacy and self-control."

Dr. Miller testified that respondent's "affect⁶ and mood is within normal limits and there are no indications of a serious affective disorder. . . . His thought processes are logical and sequential with no indications of nonsensical or tangential thinking. There are no indications of a thought, perceptual or delusional disorder." According to Dr. Miller, respondent's "major defense appears to be a strict conformity to the rules and expectations of others, particularly those in authority. He inhibits behavior that might evoke ridicule, contempt, or punitive action. . . . The test data suggests good overall behavioral controls and his acting [out]⁷ potential is within the below the average range of other adults. The test data suggests a low potential for acting out in a forceful or aggressive fashion."

⁵ This Factual Finding is based both on Dr. Miller's testimony and on the matters set forth in his report dated August 12, 2007.

⁶ According to Dr. Miller, "affect" refers to an individual's feelings, e.g., depression, anxiety, emotional volatility.

⁷ Dr. Miller's report contains the word "act," but the context reflects, and Dr. Miller testified, that the word "out" was intended.

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Finally, according to Dr. Miller, “the test data did not reveal any symptoms of clinical significance such as an affective, thought, perceptual or character disorder. All clinical scales on these two objective tests were within the average range. However, obsessive/compulsive personality traits are identified.”

With regard to the categories of diagnoses defined in the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV), Dr. Miller testified that that respondent had no Axis I (clinical) or Axis III (somatic or physical) disorders, but he did have obsessive compulsive personality traits (Axis II).⁸ The pending Board action was noted on Axis IV. Respondent’s global functioning (Axis V) was found to be 80 (on a scale from 1 to 100), which suggested that “very few issues” were going on in respondent’s life that would affect his daily functioning. Among persons seeking treatment from Dr. Miller, the highest global score he sees is probably between 70 and 75.

Dr. Miller testified that he did not regard respondent as “posing a significant risk at all” with regard to patient care. The risk level would be “low.” Dr. Miller did not “see any problem at all” with respondent relating to patients or conducting his daily activities. Dr. Miller did not express an explicit opinion as to whether respondent’s practice of nursing would pose a danger to the public health and safety.

12. Respondent testified that he became a nurse in 1996, after completing a two-year associate’s degree. He later received a bachelor’s degree, and finally, in 2002, a master’s degree, and thereby became a nurse practitioner. He received national certification as a nurse practitioner nine months later. Respondent became a nurse because he enjoys interaction with people and likes to help them with regard to both their physical and emotional needs. To help people is satisfying to him.

Respondent testified that he has been employed with Southland Cardiology Medical Group and its proprietor Dr. Sami Nazzal for the past three years.

13. Respondent testified that he considers that “every event is an opportunity to grow,” and that this is how he viewed the 52-week anger management class that he took pursuant to the terms of his probation. The class gave him a chance to learn to cope better and respond more appropriately to the events of life. Respondent believes that if he had had the skills he learned in the class at the time of the incident with RC, he would have responded differently. For example, he would have asked for a “time out” or “cool down time,” and could have avoided the yelling and screaming that led to the physical confrontation.

Respondent testified that he now understands that violence is manifested not only in striking another person, but also in breaking things, screaming, using bad language. The tools he has learned that he can use when a situation arises include time outs, no yelling, no name calling, and leaving the scene if the situation begins to escalate.

⁸ Dr. Miller clarified that such traits did not constitute an obsessive-compulsive *disorder*.

Respondent's testimony in this regard appeared sincere. It is also corroborated by the evaluation of respondent's participation in the program described below.

14. Respondent testified that if he is put on probation, he is concerned that insurance companies will find out about this and will delete Southland Cardiology from their preferred provider list for as long as his probation lasts. As a result, he could lose hospital privileges. In fact, one of several local hospitals has already informed respondent that he has 120 days within which to take care of this licensing proceeding, or he will lose hospital privileges there.

15. Respondent testified that he was involved in patient care from 1996 to 2002, when he became a nurse practitioner. Respondent never hit or became "physically rough" with a patient. His attitude is to be compassionate when a patient is hard to deal with. He understands that patients are going through a crisis, and "I am very understanding of their emotional needs." He is "right there" to provide emotional support to patients, alleviate their anxiety level, and take care of their needs.

Prosecution Costs

16. Complainant's counsel submitted a "Certification of Prosecution Costs." The certification stated, and it is found, that total charges billed by the Department of Justice to the Board through August 9, 2007, were in the amount of \$4,266, for 27 hours of work. The certification also estimated that an additional 20 hours (\$3,160) would be expended between August 9, 2007 and the date of the hearing. Both the specific tasks set forth in the certification and the total hours claimed is well within reason, given the nature of the present administrative proceeding.

LEGAL CONCLUSIONS

The Burden and Standard of Proof

1. "The purpose of an administrative proceeding concerning the revocation or suspension of a license is not to punish the individual; the purpose is to protect the public from dishonest, immoral, disreputable or incompetent practitioners." (*Ettinger v. Board of Medical Quality Assurance* (1982) 139 Cal.App.3d 853, 856.)

2. Absent a statute to the contrary, the burden of proof in disciplinary administrative proceedings rests upon the party making the charges. (*Parker v. City of Fountain Valley* (1981) 127 Cal.App.3d 99, 113; Evid. Code § 115.) The burden of proof in this proceeding is thus on complainant.

3. The standard of proof in administrative disciplinary proceedings brought against professional licensees is "clear and convincing proof to a reasonable certainty." (*James v. Board of Dental Examiners* (1985) 172 Cal.App.3d 1096, 1105.)

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4. “The key element of clear and convincing evidence is that it must establish a high probability of the existence of the disputed fact, greater than proof by a preponderance of the evidence.” (*People v. Mabini* (2001) 92 Cal.App.4th 654, 662.) This standard is less stringent than proof beyond a reasonable doubt. (*Ettinger v. Board of Medical Quality Assurance, supra*, 135 Cal.App.3d at 856.)

Applicable Statutes

5. Business and Professions Code section 490 provides as follows:

“A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.”

6. Business and Professions Code section 493 provides as follows:

“Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.”

7. Business and Professions Code section 2750 provides as follows:

“Every certificate holder or licensee, including licensees holding temporary licenses, or licensees holding licenses placed in an inactive status, may be disciplined as provided in this article. As used in this article, ‘license’ includes certificate, registration, or any other authorization to engage in practice regulated by this chapter. The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein.”

8. Business and Professions Code section 2761 provides in pertinent part:

“The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

* * *

(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.”

Applicable Regulations

9. California Code of Regulations, title 16, section 1444, provides in pertinent part:

“A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

(a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.”

10. California Code of Regulations, title 16, section 1445, provides in pertinent part:

“(b) When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

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(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the licensee.”

Board Disciplinary Guidelines

11. The Board has adopted “Recommended Guidelines for Disciplinary Orders and Conditions of Probation,” last revised in October 2002, effective May 24, 2003. The Guidelines provide in pertinent part:

“Introduction

* * *

The Board carefully considers the totality of the facts and circumstances in each individual case, with the safety of the public being paramount. Consequently, the Board requests that the Administrative Law Judge clearly delineate the factual basis for his/her decision. This is especially important should the ALJ deviate from the recommended guidelines. The rationale for the deviation should be reflected in the decision to enable the Board to understand the reasons therefore and to evaluate the appropriateness of the decision.

* * *

Factors to Be Considered

In determining whether revocation, suspension or probation is to be imposed in a given case, factors such as the following should be considered:

1. Nature and severity of the act(s), offenses, or crime(s) under consideration.
2. Actual or potential harm to the public.
3. Actual or potential harm to any patient.
4. Prior disciplinary record.
5. Number and/or variety of current violations.
6. Mitigation evidence.
7. Rehabilitation evidence.
8. In case of a criminal conviction, compliance with conditions of sentence and/or court-ordered probation.

- 9 Overall criminal record.
10. Time passed since the act(s) or offense(s) occurred.
11. If applicable, evidence of expungment proceedings pursuant to Penal Code Section 1203.4.

Violations and Recommended Actions

The Nursing Practice Act (Business and Professions Code, Division 2, Chapter 6) and additional sections of the Business and Professions Code specify the offenses for which the Board may take disciplinary action. Following are the code numbers of the offenses and the Board-determined disciplinary action. When filing an accusation, the Office of the Attorney General may also cite additional related statutes and regulations. (The numbers following "Minimum Conditions of Probation" refer to the Standard Probation Conditions or Optional Probation Conditions listed on pages 19-27 of this document. These conditions may vary dependent upon the nature of the offense.)

An actual suspension of licensure may also be required as part of the probation order in addition to the conditions listed below:

Therapy or counseling (Condition 19) is required if the violation resulted in a patient death.

* * *

2761(f) Conviction of a felony or any offense substantially related to the qualifications, functions and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof. Offenses that the Board deems to be substantially related include, but are not limited to, child abuse, murder, rape, assault and/or battery, lewd conduct, theft crimes, and sale or use of controlled substances. In addition, for reinstatement of licensure, the individual must have completed criminal probation and have compelling evidence of rehabilitation substantiated by a recent psychiatric evaluation. (See also 490, 492, and 493).

Recommended discipline: *Revocation*

* * *

Mitigation Evidence

The respondent is permitted to present mitigating circumstances at a hearing. The same opportunity is provided in the settlement process.

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The following documents are examples of appropriate evidence the respondent may submit to demonstrate his or her rehabilitative efforts and nursing competency:

- A) Recent, dated written statements from persons in positions of authority who have on-the-job knowledge of the respondent's current nursing competence. Each statement should include the period of time and capacity in which the person worked with the respondent and should contain the following sentence at the end: "I declare, under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct." It should be signed by the one making the statement and dated.
- B) Recent, dated letters from counselors regarding respondent's participation in a rehabilitation or recovery program, where appropriate. These should include a description of the program, the number of sessions the respondent has attended, the counselor's diagnosis of respondent's condition and current state of rehabilitation (or improvement), the counselor's basis for determining improvement, and the credentials of the counselor.
- C) Recent, dated letters describing respondent's participation in support groups, e.g., Alcoholics Anonymous, Narcotics Anonymous, Nurse Support Groups, etc., where appropriate, and sobriety date.
- D) Recent, dated laboratory analyses or drug screen reports, where appropriate.
- E) Recent, dated performance evaluation(s) from respondent's employer.
- F) Recent, dated physical examination or assessment report by a licensed physician, nurse practitioner, or physician assistant.
- G) Certificates or transcripts of courses related to nursing which respondent may have completed since the date of the violation. **An RN whose license has been revoked does not have an RN license and therefore cannot use his or her former license number to obtain continuing education credit/hours or for any other purpose. However, he or she may take continuing education courses so long as an RN license is not used."**

Conditions of Probation and Rationale

The Board's primary responsibility is consumer protection. The Board believes that in disciplinary matters where probation has been imposed, conditions should be established to provide for consumer protection and to allow the probationer to demonstrate rehabilitation.

* * *

PROBATIONARY TERM

Generally, the Board recommends a minimum of three (3) years probation.

PROBATIONARY CONDITIONS

Probationary conditions are divided into two categories:

- A. Standard conditions that appear in all probation orders; and
- B. Optional conditions that are appropriate to the nature and circumstances of the particular violation. . . .

Listing of Probation Conditions

STANDARD PROBATION CONDITIONS

Introductory Language and Conditions 1-13 are required as follows:

- 1) Obey all Laws
- 2) Comply With Board's Probation Program
- 3) Report in Person
- 4) Residency or Practice Outside of State
- 5) Submit Written Reports
- 6) Function as a Registered Nurse
- 7) Employment Approval and Reporting Requirements
- 8) Supervision
- 9) Employment Limitations
- 10) Complete a Nursing Course(s)
- 11) Cost Recovery (Does not apply to Applicants)
- 12) Violation of Probation
- 13) License Surrender

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OPTIONAL PROBATION CONDITIONS

Conditions 14-19 are usually required (in addition to the standard conditions 1-13) if the offense involves alcohol/drug abuse. In cases of mental illness conditions 14, 18, and 19 are recommended. Any of these optional conditions may be included if relevant to the violation.

- 14) Physical Examination
- 15) Participate in Treatment/Rehabilitation Program for Chemical Dependence
- 16) Abstain From Use of Psychotropic (Mood-Altering) Drugs
- 17) Submit to Tests and Samples
- 18) Mental Health Examination
- 19) Therapy or Counseling Program
- 20) Actual Suspension of License"

(Guidelines, pp. 1-3, 5, 7, and 14-17.)

Analysis

12. The foregoing authority may be summarized as follows in the context of the facts found above in this proceeding:

a. The Board may take disciplinary action against a registered nurse who has been convicted of a felony or any offense that is substantially related to the qualifications, functions or duties of a registered nurse. Notwithstanding any other provision of law, the record of the any such conviction shall be conclusive evidence that the conviction occurred, but the Board may still inquire into the circumstances surrounding the commission of the crime in order to determine if the conviction is substantially related and to fix the appropriate degree of discipline. (Bus. & Prof. Code, §§ 490, subd. (a)(1), 493, and 2761, subds. (a) and (f).)

b. An offense is substantially related to the qualifications, functions, or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Substantially-related offenses include those involving assaultive or abusive conduct, including battery, in violation of Penal Code section 242 and abuse of

spouse or cohabitant, in violation of Penal Code section 273.5.⁹ (Cal. Code Regs., tit. 16, § 1444, subd. (a) and the Board's Guidelines, p. 5).¹⁰ Convictions pursuant to Penal Code section 415 are not explicitly referenced in the statute, regulations, or Board guidelines.

c. Whether revocation, suspension, or probation is to be imposed in a given case depends on a number of factors, including the nature, severity and number of the acts or crimes in question, actual or potential harm to the public or to any patient, the passage of time since the occurrence of the acts or crimes, whether the licensee has successfully completed any period of probation, and evidence of rehabilitation submitted by the licensee. (Guidelines, p. 2.) The paramount consideration is public safety. (Guidelines, p. 1.)

d. The recommended discipline for a registered nurse who has been convicted of a substantially-related crime is revocation. (Guidelines, p. 5.)

13. The following matters constitute evidence that respondent is presently fit to practice in a manner consistent with the public health, safety, and welfare:

- The nature of the criminal conviction, i.e., disturbing the peace, as opposed to a more serious conviction such as assault and battery or an aggravated form of assault
- The setting of the criminal conduct, i.e., in a private residence, as opposed to a public location, such as a medical office, where greater controls would exist
- RC's letter, and in particular her confirmation that the conviction arose out of mutually assaultive conduct
- Respondent's completion of all affirmative terms and conditions of his probation, and the early termination of probation
- The setting aside of respondent's conviction pursuant to Penal Code section 1203.4

⁹ See Penal Code section 11160, subdivision (d)(8) and (18). As just noted, the Board may still inquire into the circumstances surrounding the conviction, "notwithstanding any other law," which must be understood to include not only statutes, but the Board's own regulations and guidelines. Accordingly, the guidelines cannot be held to preclude inquiry into the circumstances surrounding a battery for purposes of determining whether the battery is or is not substantially related. However, it is reasonable to infer that the guidelines establish a rebuttable presumption that convictions for the crimes there identified are substantially related.

¹⁰ Respondent contended that to be substantially related, a crime must *both* evidence the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health and safety *and* be one of a number of enumerated, specified offenses. This contention is rejected, as section 1444 of the regulations is best construed as providing examples of crimes that are deemed necessarily to evidence present or potential unfitness and thus are substantially related. The Board's construction of the regulations, as reflected in the Guidelines (p. 5), supports this interpretation.

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16

- The absence of any convictions before or after the conviction at issue in this case
- Respondent's successful completion of a 52-week domestic violence program, and the exemplary evaluation he received in connection with the program
- Respondent's testimony, which appeared to reflect his genuine attitudes, as to how valuable the class was to him and how, more specifically, the skills he learned in the class would help him cope more effectively with a domestic dispute in the future
- The absence of any evidence of any complaints having at any time been made against respondent in connection with his conduct as a nurse
- Dr. Nazzal's testimony on behalf of respondent, and in particular Dr. Nazzal's testimony with regard to respondent's calm, tolerant demeanor and manner toward his patients¹¹
- The testimony of Dr. Miller and in particular Dr. Miller's testimony that respondent's potential for acting out in a forceful or aggressive fashion is low, and his further testimony that he did not see "any problem" with regard to respondent relating to patients.
- Respondent's sincere expression of his genuine commitment to his profession and his desire to serve others in that profession.

14. The following matters constitute evidence that respondent may be presently unfit to practice in a manner consistent with the public health, safety, or welfare:

- The conviction was relatively recent
- The injury to RC's eye that resulted from respondent's conduct

15. On the basis of Factual Findings 1 through 15 and Legal Conclusions 1 through 14, and based on the applicable burden and standard of proof, it is concluded that:

a. Respondent's conviction under Penal Code section 415 was substantially related to the qualifications, functions and duties of a registered nurse. It is noted that Penal Code section 415 is not explicitly identified in the statute, regulations, or Board guidelines. It is noted further that assaultive conduct is not a necessarily element of

¹¹ As complainant correctly pointed out, Dr. Nazzal's testimony must be viewed in light of his own interest in maintaining his medical practice at its present financial level. Dr. Nazzal's perspective requires that his testimony be viewed with some caution; it does not require that his testimony be entirely disregarded. Despite his obvious financial interest in respondent's license not being placed on probation, Dr. Nazzal's testimony appeared to reflect his genuine opinions.

the offense. It is also noted that respondent's conviction occurred in the context of mutually assaultive conduct. Nonetheless, assaultive conduct on respondent's part clearly *was* involved, as established by the uncontroverted evidence that respondent struck RC in the face, and RC sustained a black eye as a result.

b. Accordingly, the Board is authorized to take disciplinary action against respondent. The parties are in agreement, and it is clear, that an outright revocation or suspension is not warranted. Less clear is whether a period of probation should be imposed on respondent's license. This is a very close case, but, as explained immediately below, it is concluded that a revocation, stayed, with the imposition of probation upon appropriate terms and conditions, is consistent with and required to protect the public health, safety, and welfare, which must remain the Board's paramount concern.

The rationale behind imposing probation on a license is "to provide for consumer protection and to allow the probationer to demonstrate rehabilitation." (**Guidelines, p. .**) Respondent's conduct since the occurrence of the crime and in particular during the period of his criminal probation was exemplary. The evaluation he received in connection with his participation in the domestic violence program was remarkable. His employer (who, concededly, was not necessarily without bias) spoke of respondent in extremely favorable terms. Dr. Miller's evaluation of respondent was also highly positive. Clearly, respondent's efforts toward rehabilitation have been substantial and he is to be commended for those efforts and for what he has achieved.

On the other hand, the criminal conduct leading to respondent's conviction occurred relatively recently, in 2004, and the conviction itself occurred in 2005. Respondent's probation was only terminated earlier this year. Even taking into account the strong evidence of rehabilitation presented at the hearing, it is concluded that an insufficient period of time has passed to permit a reliance on such rehabilitation with the degree of confidence that is consistent with the paramount interest of public safety. However, and again in light of the strong evidence of rehabilitation presented, it is further concluded that the normal *minimum three-year period of probation is not warranted, and that a probationary period of one year is sufficient to permit respondent to demonstrate his rehabilitation to the degree that is consistent with the public health and safety.* All standard terms of probation will be included, except that requiring completion of a nursing course, the rationale for which (i.e., remediation of deficiencies in knowledge) is not applicable to respondent. Two optional terms of probation will also be included, those providing for a mental health examination and a *therapy or counseling program.*¹²

16. By reason of Factual Findings 1 through 15 and Legal Conclusions 1 through 15, cause exists to revoke respondent's Registered Nurse License Number 535192, to stay that revocation, and to place respondent on probation for one year.

¹² The standard language relating to a therapy or counseling program will be modified slightly to give the Board maximum flexibility to determine whether, following his mental health examination, respondent in fact needs additional treatment programs and, if so, the nature and length of such programs.

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17. The reasonable costs of investigation and enforcement of this action recoverable by the Board pursuant to Business and Professions Code section 125.3 totals \$7,426.

Accordingly, there is hereby issued the following:

ORDER

Pursuant to Legal Conclusions 1 through 17:

IT IS HEREBY ORDERED that:

- a. Registered Nurse License Number 535192 issued to respondent Ray Velasco is revoked.
- b. Public Health Nurse Certificate Number 61724 issued to respondent Ray Velasco is revoked.
- c. Nurse Practitioner Certificate Number 13526 issued to respondent Ray Velasco is revoked.
- d. Nurse Practitioner Furnishing Certificate Number 13526 issued to respondent Ray Velasco is revoked.

However, these revocations are all stayed and respondent is placed on probation for one year on the following conditions:

SEVERABILITY CLAUSE. Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

(1) OBEY ALL LAWS. Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.

CRIMINAL COURT ORDERS: If respondent is under criminal court orders, including probation or parole, and any order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

(2) COMPLY WITH THE BOARD'S PROBATION PROGRAM. Respondent shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of respondent's compliance with the Board's Probation Program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension.

(3) REPORT IN PERSON. Respondent, during the period of probation, shall appear in person at interviews/ meetings as directed by the Board or its designated representatives.

(4) RESIDENCY, PRACTICE, OR LICENSURE OUTSIDE OF STATE. Periods of residency or practice as a registered nurse outside of California shall not apply toward a reduction of this probation time period. Respondent's probation is tolled, if and when he or she resides outside of California. Respondent must provide written notice to the Board within 15 days of any change of residency or practice outside the state, and within 30 days prior to re-establishing residency or returning to practice in this state.

Respondent shall provide a list of all states and territories where he or she has ever been licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide information regarding the status of each license and any changes in such license status during the term of probation. Respondent shall inform the Board if he/she applies for or obtains a new nursing license during the term of probation.

(5) SUBMIT WRITTEN REPORTS. Respondent, during the period of probation, shall submit or cause to be submitted such written reports/declarations and verification of actions under penalty of perjury, as required by the Board. These reports/declarations shall contain statements relative to respondent's compliance with all the conditions of the Board's Probation Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

Respondent shall provide a copy of this decision to the nursing regulatory agency in every state and territory in which he or she has a registered nurse license.

(6) FUNCTION AS A REGISTERED NURSE. Respondent, during the period of probation, shall engage in the practice of registered nursing in California for a minimum of 24 hours per week for six consecutive months or as determined by the Board.

For purposes of compliance with the section, "engage in the practice of registered nursing" may include, when approved by the Board, volunteer work as a registered nurse, or work in any non-direct patient care position that requires licensure as a registered nurse.

The Board may require that advanced practice nurses engage in advanced practice nursing for a minimum of 24 hours per week for six consecutive months or as determined by the Board.

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If respondent has not complied with this condition during the probationary term, and respondent has presented sufficient documentation of his good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of respondent's probation period up to one year without further hearing in order to comply with this condition. During the one-year extension, all original conditions of probation shall apply.

(7) EMPLOYMENT APPROVAL AND REPORTING REQUIREMENTS. Respondent shall obtain prior approval from the Board before commencing or continuing any employment, paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all performance evaluations and other employment related reports as a registered nurse upon request of the Board.

Respondent shall provide a copy of this decision to his employer and immediate supervisors prior to commencement of any nursing or other health care related employment.

In addition to the above, respondent shall notify the Board in writing within seventy-two (72) hours after he or she obtains any nursing or other health care related employment. Respondent shall notify the Board in writing within seventy-two (72) hours after he or she is terminated or separated, regardless of cause, from any nursing, or other health care related employment with a full explanation of the circumstances surrounding the termination or separation.

(8) SUPERVISION. Respondent shall obtain prior approval from the Board regarding respondent's level of supervision and/or collaboration before commencing or continuing any employment as a registered nurse, or education and training that includes patient care.

Respondent shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the Board of Registered Nursing, unless alternative methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are approved.

Respondent's level of supervision and/or collaboration may include, but is not limited to the following:

- (a) Maximum - The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.
- (b) Moderate - The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the hours respondent works.
- (c) Minimum - The individual providing supervision and/or collaboration has person-to-person communication with respondent at least twice during each shift worked.
- (d) Home Health Care - If respondent is approved to work in the home health care setting, the individual providing supervision and/or collaboration shall have person-to-person

communication with respondent as required by the Board each work day. Respondent shall maintain telephone or other telecommunication contact with the individual providing supervision and/or collaboration as required by the Board during each work day. The individual providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to patients' homes visited by respondent with or without respondent present.

(9) EMPLOYMENT LIMITATIONS. Respondent shall not work for a nurse's registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse, or for an in-house nursing pool.

Respondent shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been approved by the Board. Respondent shall not work in any other registered nursing occupation where home visits are required.

Respondent shall not work in any health care setting as a supervisor of registered nurses. The Board may additionally restrict respondent from supervising licensed vocational nurses and/or unlicensed assistive personnel on a case-by-case basis.

Respondent shall not work as a faculty member in an approved school of nursing or as an instructor in a Board approved continuing education program.

Respondent shall work only on a regularly assigned, identified and predetermined worksite(s) and shall not work in a float capacity.

If respondent is working or intends to work in excess of 40 hours per week, the Board may request documentation to determine whether there should be restrictions on the hours of work.

(10) COST RECOVERY. Respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code Section 125.3 in the amount of \$ 7,426. Respondent shall be permitted to pay these costs in a payment plan approved by the Board, with payments to be completed no later than three months prior to the end of the probation term.

(11) VIOLATION OF PROBATION. If respondent violates the conditions of his probation, the Board after giving respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation/suspension) of respondent's license.

If during the period of probation, an accusation or petition to revoke probation has been filed against respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.

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(12) LICENSE SURRENDER. During respondent's term of probation, if he or she ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, respondent may surrender his license to the Board. The Board reserves the right to evaluate respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, respondent will no longer be subject to the conditions of probation.

Surrender of respondent's license shall be considered a disciplinary action and shall become a part of respondent's license history with the Board. A registered nurse whose license has been surrendered may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision:

- 1) Two years for reinstatement of a license that was surrendered for any reason other than a mental or physical illness; or
- 2) One year for a license surrendered for a mental or physical illness.

(12) MENTAL HEALTH EXAMINATION. Respondent shall, within 45 days of the effective date of this decision, have a mental health examination including psychological testing as appropriate to determine his capability to perform the duties of a registered nurse. The examination will be performed by a psychiatrist, psychologist or other licensed mental health practitioner approved by the Board. The examining mental health practitioner will submit a written report of that assessment and recommendations to the Board. All costs are the responsibility of respondent. Recommendations for treatment, therapy or counseling made as a result of the mental health examination will be instituted and followed by respondent.

If respondent is determined to be unable to practice safely as a registered nurse, the licensed mental health care practitioner making this determination shall immediately notify the Board and respondent by telephone, and the Board shall request that the Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall immediately cease practice and may not resume practice until notified by the Board. During this period of suspension, respondent shall not engage in any practice for which a license issued by the Board is required, until the Board has notified respondent that a mental health determination permits respondent to resume practice. This period of suspension will not apply to the reduction of this probationary time period.

If respondent fails to have the above assessment submitted to the Board within the 45-day requirement, respondent shall immediately cease practice and shall not resume practice until notified by the Board. This period of suspension will not apply to the reduction of this probationary time period. The Board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by respondent to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

(13) THERAPY OR COUNSELING PROGRAM. Respondent, at his expense, and if required by the Board, shall participate in an on-going counseling program, until such time as the Board releases him from this requirement and only upon the recommendation of the counselor. Written progress reports from the counselor will be required at various intervals.

(14) RESTORATION OF LICENSE. Upon successful completion of probation, respondent's license shall be fully restored.

DATED: 9-18-07



DONALD P. COLE
Administrative Law Judge
Office of Administrative Hearings

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8 Attorneys for Complainant
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10 **BEFORE THE**
11 **BOARD OF REGISTERED NURSING**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

13 In the Matter of the Accusation Against:

Case No. 2007-167

14 RAY VELASCO
12221 Hythe Street
15 Moreno Valley, CA 92557

A C C U S A T I O N

16 Registered Nursing License No. 526168
Public Health Nurse Certificate No. 61724
17 Nurse Practitioner Certificate No. 13526
Nurse Practitioner Furnishing Certificate No. 13526

18 Respondent.
19

20 Complainant alleges:

21 **PARTIES**

22 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Accusation
23 solely in her official capacity as the Executive Officer of the Board of Registered Nursing,
24 Department of Consumer Affairs.

25 2. On or about September 5, 1996, the Board of Registered Nursing (Board)
26 issued Registered Nursing License Number 526168 to Ray Velasco (Respondent). The
27 Registered Nursing License was in full force and effect at all times relevant to the charges
28 brought herein and will expire on January 31, 2008, unless renewed.

conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

10. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, "license" includes "certificate," "permit," "authority," and "registration."

11. Section 2761 of the Code states:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

....

(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.

....

12. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

13. Section 2811(b) of the Code provides, in pertinent part, that the Board may renew an expired license at any time within eight years after the expiration.

14. California Code of Regulations, title 16, section (Regulation) 1444, states:

A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

1 (a) Assaultive or abusive conduct including, but not
2 limited to, those violations listed in subdivision (d) of Penal Code
3 Section 11160.

4

5 15. Regulation 1445, states in part pertinent:

6

7 (b) When considering the suspension or revocation of a license
8 on the grounds that a registered nurse has been convicted of a crime,
9 the board, in evaluating the rehabilitation of such person and his/her
10 eligibility for a license will consider the following criteria:

11 (1) Nature and severity of the act(s) or offense(s).

12 (2) Total criminal record.

13 (3) The time that has elapsed since commission of the act(s)
14 or offense(s).

15 (4) Whether the licensee has complied with any terms of parole,
16 probation, restitution or any other sanctions lawfully imposed
17 against the licensee.

18 (5) If applicable, evidence of expungement proceedings pursuant
19 to Section 1203.4 of the Penal Code.

20 (6) Evidence, if any, of rehabilitation submitted by the licensee.

21 **FIRST CAUSE FOR DISCIPLINE**

22 **(April 18, 2005 – Misdemeanor Conviction)**

23 16. Respondent is subject to disciplinary action under Code sections 490 and
24 2761(a), and California Code of Regulations, title 16, section 1444 on the grounds that
25 Respondent was convicted of a crime involving assaultive or abusive conduct, which is
26 substantially related to his qualifications, functions and duties as a registered nurse. The
27 circumstances are as follows:

28 a. On or about April 18, 2005, in the Superior Court of
Riverside County, in proceedings entitled *People of the State of California v. Raymond Velasco*,
Case No. RIM 461556, Respondent pled guilty to Penal Code section 415 (Fighting, Noise,
Offensive Words), a misdemeanor.

b. On or about April 18, 2005, Respondent was sentenced to

1 summary probation for three years with terms and conditions including: obey all laws and
2 ordinances, be committed to the custody of the Sheriff for 45 days, pay a fee to the Domestic
3 Violence Fund in the amount of \$400.00, pay a restitution fine in the amount of \$100.00, pay
4 court costs and fees in the sum of \$55.00, avoid negative contact with the victim, enroll in a
5 certified 52-week Domestic Violence/Batterers Program and provide proof of enrollment to the
6 court, and complete Anger Management Counseling.

7 c. The facts and circumstances surrounding this offense are that on
8 April 30, 2004, Respondent and his girlfriend, R.C., began arguing over finances, which led to
9 Respondent's grabbing R.C.'s arms and slapping her about her face, blackening her left eye. A
10 misdemeanor cohabitant abuse charge under Penal Code, section 273.5 was filed against
11 Respondent on November 8, 2004, which was later dismissed in exchange for Respondent's
12 pleading guilty to violating Penal Code section 415 (Fighting, Noise, Offensive Words).

13 **SECOND CAUSE FOR DISCIPLINE**

14 **(Unprofessional Conduct)**

15 17. Respondent is subject to disciplinary action for unprofessional conduct
16 under section 2761(a) and Regulation 1444 in that he engaged in assaultive and abusive conduct,
17 as set forth above in paragraph 13 above, which is realleged and incorporated herein by
18 reference.

19 **PRAYER**

20 WHEREFORE, Complainant requests that a hearing be held on the matters herein
21 alleged, and that following the hearing, the Board issue a decision:

22 1. Revoking or suspending Registered Nursing License Number 526168
23 issued to Ray Velasco;

24 2. Revoking or suspending Public Health Nurse Certificate Number 61724
25 issued to Ray Velasco;

26 3. Revoking or suspending Nurse Practitioner Certificate Number 13526
27 issued to Ray Velasco;


28 4. Revoking or suspending Nurse Practitioner Furnishing Certificate

1 Number 13526 issued to Ray Velasco;

2 5. Ordering Ray Velasco to pay the Board the reasonable costs of the
3 investigation and enforcement of this case, pursuant to Business and Professions Code section
4 125.3; and

5 6. Taking such other and further action as deemed necessary and proper.
6

7 DATED: 12/18/06

8 
9 RUTH ANN TERRY, M.P.H., R.N.
10 Executive Officer
11 Board of Registered Nursing
12 Department of Consumer Affairs
13 State of California
14 Complainant

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